

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

MANAGEMENT CASE: C/A No. 1:06-mn-6000

In re: Graniteville Cases	)	C/A No. 1:05-0114-MBS
	)	C/A No. 1:05-0132-MBS
	)	C/A No. 1:05-0148-MBS
	)	C/A No. 1:05-0253-MBS
	)	C/A No. 1:05-0254-MBS
	)	C/A No. 1:05-0256-MBS
	)	C/A No. 1:05-0258-MBS
	)	C/A No. 1:05-0470-MBS
	)	C/A No. 1:05-0592-MBS
	)	C/A No. 1:05-0596-MBS
	)	C/A No. 1:05-0598-MBS
	)	C/A No. 1:05-0657-MBS
	)	C/A No. 1:05-0864-MBS
	)	C/A No. 1:05-0894-MBS
	)	C/A No. 1:05-1108-MBS
	)	C/A No. 1:05-2040-MBS
	)	C/A No. 1:05-2095-MBS
	)	C/A No. 1:05-2817-MBS
	)	C/A No. 1:05-3177-MBS

**PLAINTIFFS' RULE 56(f) MOTION TO STAY THEIR RESPONSES TO
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56(f), Plaintiffs respectfully move this Court to stay any rulings on the Motion for Partial Summary Judgment filed by Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Norfolk Southern"), until the fact discovery is ripe.

1.

The parties have yet to complete discovery in the above cases. (*See* Affidavit attached.) Mr. Veal, original deposition set for January 19, 2006, is now set for February 23, 2006. Another two depositions are being set also for February 23, 2006, which may

relate to these issues. Four sets of discovery served on Norfolk Southern are still outstanding. Mr. Bob Wells' deposition is scheduled March 15, 2006, which may relate to these issues. Dr. Lina's deposition, previously scheduled in January, is scheduled March 29, 2006, and it directly relates to these issues.

2.

Because Plaintiffs lack necessary discovery, Defendants' Motion is premature under Federal Rule of Civil Procedure 56(f), which provides that when it appears from the affidavits of a party opposing a motion for summary judgment that facts essential to the opposition are unavailable, the court may refuse the motion or may order a continuance to permit discovery. The purpose of Rule 56(f) is to provide non-movants with a much needed tool to keep open the doors of discovery in order to adequately combat a summary judgment motion. *See, e.g., Wichita Falls Office Assoc. v. Banc One Corp.*, 978 F.2d 915, 919 (5th Cir. 1992).

3.

Courts have held that the "continuance of a motion for summary judgment for purposes of discovery should be granted almost as a matter of course." *Wichita Falls*, 978 F.2d at 919 n.4; *see also Resolution Trust Corp. v. North Bridge Assoc., Inc.*, 22 F.3d 1198, 1203 (1st Cir. 1994) (noting that "district courts should construe motions that invoke [Rule 56(f)] generously"). In short, as the Fourth Circuit recently held, it is an abuse of discretion to deny a properly-supported motion seeking additional discovery under Rule 56(f). *See Willis*, 426 F.3d at 264.

4.

In this case, Plaintiffs believe that discovery is necessary to rebut the contentions contained in Defendants' Motion concerning factual issues.

5.

For the foregoing reasons, Plaintiffs may develop facts essential to refuting Defendants' Motion. Accordingly, the Court should stay ruling until Plaintiffs' may fully respond to Defendants' Motion.

6.

Plaintiffs did confer with counsel for Defendants who would no consent to this motion.

7.

Wherefore, Plaintiffs respectfully request that in accordance with Federal Rule of Civil Procedure 56(f), the Court grant the attached Proposed Order and that the time for responding to Defendants' Motion be stayed.

Respectfully submitted, this 2nd day of February, 2006.

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CERTIFICATE OF SERVICE

I, Terry E. Richardson, Jr., attorney for Richardson, Patrick, Westbrook & Brickman, LLC, do hereby certify that I have this date electronically and/or mailed postage paid, a true copy of PLAINTIFFS' RULE 56(f) MOTION TO STAY THEIR RESPONSES TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT to all counsel of record as follows:

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February 2, 2006

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